



California Fair Political Practices Commission

April 17, 1992

John D. Flitner
City Attorney
6750 Commerce Boulevard
Rohnert Park, CA 94927

Re: Your Request for Advice
Our File No. I-92-065

Dear Mr. Flitner:

This letter is in response to your request for advice regarding the responsibilities of Ms. Coe, a member of the Rohnert Park Rent Review Board, under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Your request seeks general guidance regarding the provisions of the Act. Accordingly, we treat your letter as a request for informal assistance pursuant to the provisions of Regulation 18329.²

Our jurisdiction is limited to the provisions of the Act. Thus, we make no comments regarding other provisions of law such as the Rent Review Ordinance and the Rules and Regulations to which you refer in your request for advice. In addition, our advice is prospective in nature and we make no comments regarding past conduct. (Regulation 18329(b)(8)(A).)

QUESTIONS

1. Do the conflict-of-interest provisions of the Act require Ms. Coe to disqualify herself from participating in governmental decisions which will affect all of the five mobilehome parks in Rohnert Park?

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c).)

2. Do the conflict-of-interest provisions of the Act require Ms. Coe to disqualify herself from participating in governmental decisions which will have an effect on some but not all the mobilehome parks in the city if Rancho Verde is not involved in the decision?

3. Do the conflict-of-interest provisions of the Act require Ms. Coe to disqualify herself from participating in governmental decisions which will affect some mobilehome parks, including Rancho Verde, but which will not affect all mobilehome parks?

4. Do the conflict-of-interest provisions of the Act require Ms. Coe to disqualify herself from participating in governmental decisions which will affect Rancho Verde only?

5. Under what circumstances is Ms. Coe precluded from participating in such decisions?

6. Do the conflict-of-interest provisions of the Act require mobilehome park owners to disqualify themselves from participating in decisions of the rent review board?

CONCLUSIONS

1-5. Under the conflict-of-interest provisions of the Act, Ms. Coe must disqualify herself from participating in any decision of the rent review board which will foreseeably and materially affect her economic interests in a manner which is distinguishable from the effect of the decision on the public generally.

6. Mobilehome park owners who are members of the rent review board must disqualify themselves from participating in decisions of the board which will have a reasonably foreseeable material financial effect on their economic interests which is distinguishable from the effect of the decisions on the public generally.

FACTS

Rancho Verde is one of five mobilehome parks within the City of Rohnert Park. Ms. Coe, a member of the Rohnert Park Rent Review Board, is a month-to-month tenant in this mobilehome park which has approximately 300 spaces and approximately 750 residents.³ She is at present considering a long-term lease. The other four mobilehome parks are Las Casitas with 126 spaces and an estimated 315 residents, Rancho Feliz with 294 spaces and an estimated 735 residents, Rancho Grande with 314 spaces and an estimated 785 residents, and Valley Village with 286 spaces and an

³ These facts contain information you submitted for our consideration on February 20, 1992.

estimated 715 residents. You estimate⁴ that the number of persons residing in mobilehome parks within the city is approximately 3,300. The total population of the city is approximately 37,500.⁵

On or about January 31, 1991, the owner of Rancho Verde mobilehome park applied for permission to increase individual rents at Rancho Verde mobilehome park by an additional \$220 per month. The increase was to be effective April 1, 1991.

On or about February 7, 1991, the Rohnert Park Rent Review Board (the "board"), in accordance with Section 3 of the Rohnert Park Rent Review Ordinance, appointed Mark Dennis to hear the rent increase application. Mr. Dennis held the hearing and the board directed that the hearing be reopened for resolution of issues or questions submitted by the board. Ms. Coe was not a member of the board at this time.

Mr. Dennis conducted a limited rehearing and submitted his decision. The decision was reviewed by the board. Mr. Dennis' decision reduced the request from \$220 to approximately \$80 per month. Ms. Coe was a member of the board at the time of the second review. When the item was presented to the board, the attorney for Rancho Verde challenged Ms. Coe's ability to participate in the review because Ms. Coe was a tenant in Rancho Verde.

You issued a written opinion to the board and concluded that Ms. Coe did not have a conflict of interest.⁶ At the direction of the Rohnert Park Rent Review Board, you now seek our advice to determine whether Ms. Coe has a conflict of interest under the provisions of the Act.

⁴ You have stated in the additional information provided that the total population of the parks is unknown. What has been used as a factor or multiplier is 2.5 persons per unit. City offices have advised you that it is a reasonably accurate measure for determining mobilehome park population and it is the figure that the city uses.

⁵ The official Rohnert Park city population as of January 1, 1991, the last available date for official population figures, was 36,984. The planning department estimates city population as of February 1, 1992, to be 37,500.

⁶ You state in your request for advice that you have submitted your opinion for our review. However, your opinion was not included with your request for advice, and although I communicated this fact to you during the course of our telephone conversation of February 18, 1992, we have not received a copy of your opinion. Thus, we make no comments regarding this opinion.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. Members of the Rohnert Park Rent Review Board are public officials. (Section 82048.)

Financial Interests

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, or on a member of the official's immediate family,⁷ or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of

⁷ An official's "immediate family" are his or her spouse and dependent children. (Section 82029.)

a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103.

Under the Act, a public official who resides in a mobilehome park pursuant to a month-to-month tenancy does not have an interest in real property.⁸ However, such a public official must disqualify himself or herself from participating in decisions which will have a material financial effect on the mobilehome which is an asset of the public official unless the "public generally" exception applies, as discussed below. Conversely, a public official who owns a mobilehome park has an interest in real property and a business interest in the park. Finally, a public official who has a long-term lease in a mobilehome park has both an interest in real property⁹ and an asset which is the mobilehome itself. Both are potentially disqualifying economic interests as discussed below.

Making, Participating in Making, or Attempting to Influence a Governmental Decision

A public official makes a governmental decision or participates in the making of a governmental decision whenever the public official votes on a matter, commits the agency to a course of action, or enters into any contractual agreement on behalf of the agency. (Regulation 18700(b).) Additionally, a public official participates in a governmental decision when, acting within the authority of his or her position, the public official:

- (1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

⁸ A month-to-month tenancy is not a leasehold interest under the Act. (Regulation 18233.)

⁹ Section 82033 provides that an "interest in real property" includes any leasehold, beneficial or ownership interest in real property located in the jurisdiction owned directly, indirectly or beneficially by a public official if the fair market value of the interest is \$1,000 or more. The value of a leasehold interest is the amount of rent owed during a 12-month period. (Regulation 18729(b).) Thus, if a public official's payments on a lease are \$1,000 or more annually, the public official has a leasehold interest in real property as defined in the Act.

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision..

Regulation 18700(c).

With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, an official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer. (Regulation 18700.1.)

Accordingly, if it is reasonably foreseeable that a public official's economic interests will be materially affected by a decision regarding mobilehome park issues, the public official must not only disqualify himself or herself from participating in formal decisions of the rent review board which may affect such interests, but he or she must also abstain from attempting to influence such decisions by communicating with other members of the board or the city staff regarding the decisions.

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. To be foreseeable, the effect of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Community Development Comm. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817; In re Thorner (1975) 1 FPPC Ops. 198.) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

Pursuant to the terms of the Rohnert Park Mobile Home Ordinance, the board has the authority to regulate the rent charged by mobilehome parks to its tenants. These decisions will presumably affect the terms and conditions of rental agreements and the value of mobilehomes located in the city's mobilehome parks. Thus, it is reasonably foreseeable that these decisions will have an effect on the economic interests of members of the board who either own mobilehome parks or who are residents of a mobilehome park. If the effect will be material, the public officials must disqualify themselves from participating in the decisions if the effect is distinguishable from the effect on the public generally.

Materiality

A. Mobilehomes

A mobilehome is an asset. When a public official's assets will be affected by a governmental decision, the effect of the decision is material if the decision will result in the personal expenses, income, assets (other than interests in real property), or liabilities of the public official increasing or decreasing by at least \$250. (Regulation 18702.1(a)(4).) We have previously advised that the treatment of space in a mobilehome park as one that is rent controlled or not rent controlled would appear to have an impact on the fair market value of a mobile home located on that space. (Ennis Advice Letter, No. I-91-299.)

If the value of Ms. Coe's mobilehome will increase or decrease by \$250 or more in a 12-month period as the result of any decision of the board, she would be required to disqualify herself from participating in such governmental decisions. She must also disqualify herself if any action of the board would increase or decrease her liabilities in a 12-month period by \$250 or more. For example, approval of a rent increase of \$80 per month would result in an increase in liabilities for mobilehome park renters of \$960 in a 12-month period. Thus, disqualification would be required.

The same analysis regarding the mobilehome, which is an asset, would apply to a public official residing in a mobilehome park under a lease agreement. However, a leasehold is an interest in real property. Therefore, the analysis must include consideration of an increase or decrease in the value of the mobilehome and the potential increase or decrease in the income or liabilities of the public official in addition to consideration of the leasehold itself as discussed below.

B. Leasehold Interests

A public official who resides in a mobilehome park under a lease agreement has an interest in real property. (Section 82033.) The effect of a decision is material as to a leasehold interest in real property if any of the following applies:

(a) The decision will change the legally allowable use of the leased property, and the lessee has a right to sublease the property;

(b) It is reasonably foreseeable that the lessee will change the actual use of the property as a result of the decision;

(c) It is reasonably foreseeable that the decision will result in a change in the actual use of property within 300 feet of the leased property, and the changed use will significantly enhance or significantly decrease the use or enjoyment of the leased property;

(d) The decision will increase or decrease the amount of rent for the leased property by \$250 or 5 percent, whichever is greater, during any 12-month period following the decision; or

(e) The decision will result in a change in the termination date of the lease.

Regulation 18702.4.

Accordingly, if a decision of the rent review board will affect a leasehold interest as described above, a member of the board residing in a mobilehome park under a lease agreement must disqualify himself or herself from participating in the decision.

C. The Owner of a Mobilehome Park

An individual who owns a mobilehome park has an interest in real property and a business interest. In order to determine whether the effect of a governmental decision on these interests will be material, it must first be determined whether they will be affected directly or indirectly by the decision.

1. Interest in Real Property

An official's real property is directly involved in a pending governmental decision if:

(A) The decision involves the zoning or rezoning, annexation or deannexation, sale,

purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more, or a similar decision affecting such property;

(B) The decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of such property;

(C) The decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such property; or

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(E) For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the subject property, but shall not refer to an amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category.

Regulation 18702.1(a)(3).

When an official's interest in real property is directly involved in a governmental decision, the effect of the decision is presumed to be material and the official's disqualification is required unless the "public generally" exception applies, as discussed below. (Regulation 18702.1.)

Conversely, if this interest in real property is affected indirectly by a governmental decision, such as would be the case if a decision affected property situated within 300 feet of the mobilehome park, the appropriate standard for determining materiality is that of Regulation 18702.3 (copy enclosed).

2. Business Interest

As stated above, the owner of a mobilehome park also has a business interest in the mobilehome park. A business entity will be directly affected by a governmental decision if the business entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

Regulation 18702.1(b).

When a relatively small business entity such as a mobilehome park in which a public official has an investment of \$1,000 or more will be affected directly by a governmental decision, the effect of a governmental decision is presumed to be material. (Regulation 18702.1(a)(2)). However, a public official who owns such a business interest may appear before his or her agency as any other member of the general public solely to represent himself or herself on a matter which is related to his or her personal interests. An official's personal interests include but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

(B) A business entity wholly owned by the official or members of his or her immediate family.

(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

Regulation 18700.1(b).

Thus, a public official who is the owner of a mobilehome park, as well as public officials who may leasehold interests in a park, may appear before the board to represent their own interests if the provisions of Regulation 18700.1(b) apply.

When an official's interest in a business entity is indirectly affected by a governmental decision, the appropriate standard for determining materiality is that of Regulation 18702.2. For a relatively small business entity such as a mobilehome park, Subdivision (g) of Regulation 18702.2 states that the effect of a decision is material if:¹⁰

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

¹⁰ Please note, however, that pursuant to the provisions of Regulation 18702.2(f), if a business entity has net tangible assets of at least \$4,000,000, and has pre-tax income for the last fiscal year of at least \$750,000, with net income from that period of at least \$400,000, the effect of a decision is material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$30,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$7,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$30,000 or more.

Regulation 18702.2(c).

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

Regulation 18702.2(g).

Accordingly, disqualification would be required if a decision of the board would affect a mobilehome park business in the amounts discussed above.

Public Generally

Even when the reasonably foreseeable financial effect of a decision is material, disqualification is required only if the effect is distinguishable from the effect on the public generally. (Section 87100.) If the decision does not affect all members of the public in the same manner, disqualification may be required unless the effect of the decision on the public official's interest is the same as the effect on a significant segment of the public. (Regulation 18703.)

For purposes of our discussion, the public is the entire population of the city. (In re Legan (1985) 9 FPPC Ops. 1; In re Owen (1976) 2 FPPC Ops. 77; Jorgensen Advice Letter, No. A-90-017.) Because not all the residents of the city own a mobilehome park or are residents of such a park, decisions regarding mobilehome parks will not affect the entire jurisdiction. However, we have advised that when a significant segment of the public will be affected by a decision in a manner which is not distinguishable from the effect on the public official, the "public generally" exception applies and the official is not disqualified from participating in such decisions. In particular, we have advised that mobilehome owners and tenants may constitute a significant segment of the public. (Battersby Advice Letter, No. I-91-034.)

You have indicated that the total population of the city is 37,500. The total population residing in mobilehome parks is approximately 3,300. We have previously advised that mobilehome owners which make up 10.9% or more of all households in a city constitute the "public generally." This is so because mobilehome owners are members of virtually all occupations and are similarly diverse in their other characteristics. (Morgan Advice Letter, No. A-81-507.) Your facts indicate that approximately 9 percent of the population of the jurisdiction resides in mobilehomes. Decisions regarding increases in mobilehome rents will affect all residents of mobilehomes. Accordingly, the "public generally" exception would apply and Ms. Coe would not have to disqualify herself from participating in decisions of the rent review board

which will have an effect on the economic interests of Ms. Coe which is substantially similar to the effect on other mobilehome park residents when mobilehome park residents constitute a significant segment of the public.

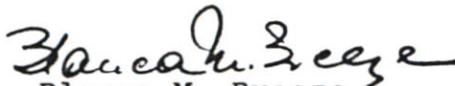
For example, a decision to allow for an increase in rent for all mobilehome park residents in the jurisdiction will presumably affect all residents of mobilehome parks, including Ms. Coe. Thus her disqualification would not be required. Moreover, a decision to grant a petition for rent adjustment under Section 6 of the mobilehome ordinance may have no material effect on Ms. Coe's economic interests. This is so because Section 6 applies to individual rent adjustments. Under this set of facts, Ms. Coe would not be required to disqualify herself from participating in such decisions. Conversely, if a decision would affect Ms. Coe's economic interests materially, and the effect of the decision is distinguishable from the effect of the decision on other mobilehome park residents, her disqualification would be required.

The same conflict-of-interest rules discussed above are applicable to mobilehome park owners who are members of the rent review board. Accordingly, they must disqualify themselves from participating in decisions of the board which will foreseeably and materially affect their economic interests, as discussed above. The "public generally" exception would not be applicable to mobilehome park owners unless the decision would affect the interests of mobilehome park owners in a manner which is substantially similar to the effect of the decision on all mobilehome residents when mobilehome residents constitute a significant segment of the public.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.¹¹

Sincerely,

Scott Hallabrin
Acting General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

SH:BMB:bb

Enclosure

¹¹ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.